

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SYLVESTER DESHIELDS,	§
	§ No. 595, 2011
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0906011541A
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 27, 2012

Decided: March 30, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 30<sup>th</sup> day of March 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Sylvester DeShields, filed an appeal from the Superior Court's October 24, 2011 order denying his third motion for sentence modification pursuant to Superior Court Criminal Rule 35(b). The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record before us reflects that, in December 2009, DeShields pleaded guilty to Assault in the First Degree. He was sentenced to 25 years of Level V incarceration, to be suspended after 12 years for probation. DeShields has appealed from the Superior Court's denial of his third motion for sentence modification on the ground that he is unfairly being denied access to rehabilitation programs that would lead to a reduction in his sentence. He appears to argue that his participation in various educational and rehabilitative programs constitutes such "extraordinary circumstances" under Rule 35(b) as would warrant consideration of his motion.

(3) Rule 35(b) provides that the Superior Court may modify a sentence of imprisonment on a motion made within 90 days after the sentence is imposed. A motion filed outside the 90-day period will be considered only in "extraordinary circumstances." Rule 35(b) also provides that the Superior Court will not consider repetitive requests for sentence modification. The record reflects that DeShields' motion is both untimely and repetitive.

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<sup>1</sup> Supr. Ct. R. 25(a).

(4) Moreover, DeShields’ claim that he has a right to be assigned to a specific rehabilitation program is legally incorrect. This Court previously has held that the Department of Correction has no duty to provide a prisoner with a particular rehabilitation program.<sup>2</sup> Finally, DeShields has failed to demonstrate such “extraordinary circumstances” as would warrant consideration of his motion. This Court has held that participation in educational and rehabilitative programs, while commendable, does not, in and of itself, constitute “extraordinary circumstances” for purposes of Rule 35(b).<sup>3</sup> Thus, for all of the above reasons, the Superior Court properly denied DeShields’ motion.<sup>4</sup>

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:  
/s/ Carolyn Berger  
Justice

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<sup>2</sup> *Fatir v. State*, Del. Supr., No. 680, 2006, Ridgely, J. (Sept. 5, 2007) (citing *DiStefano v. Watson*, 566 A.2d 1, 5-6 (Del. 1989) and *Carr v. Redman*, Del. Supr., No. 264, 1987, Holland, J. (Apr. 27, 1988)).

<sup>3</sup> *Morgan v. State*, Del. Supr., No. 94, 2009, Berger, J. (May 11, 2009).

<sup>4</sup> *Colon v. State*, 900 A.2d 635, 638 (Del. 2006).